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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/601,751	08/07/2000	BERTIL R.R. PERSSON	U012883-2	9637
140	7590	07/21/2006		EXAMINER
LADAS & PARRY				OROPEZA, FRANCES P
26 WEST 61ST STREET				
NEW YORK, NY 10023			ART UNIT	PAPER NUMBER
			3766	

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/601,751	PERSSON ET AL.
	Examiner Frances P. Oropeza	Art Unit 3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 3/24/06 and 5/10/06 (Responses).  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 44-55,57-64,70-73,75-79,81 and 83-87 is/are pending in the application.  
 4a) Of the above claim(s) 59-64 and 87 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 44-55,57,58,70-73,75-79,81 and 83-86 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Amendment***

1. The Applicant amended at least the independent claims in the response filed in the 3/24/06 and 5/10/06, hence the rejection of record is withdrawn and a new rejection established in the subsequent paragraphs.

### ***Restriction***

2. Newly submitted claim 87 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The previously submitted claims do not claim “sensors arranged to detect the distance between the electrodes”.

Since the Applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 87 and the dependent claims 59-64 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 102***

3. Claims 44-55, 57, 58, 70-73, 75-79, 81 and 83-86 are rejected under 35 U.S.C. 102(b) as being anticipated by Weaver et al. (US 5019034). Weaver et al. teach an electroporation device and methods that have an impedance measuring circuit that determines the degree of REB – reversible electrical breakdown – a.k.a. cell electroporation, by measuring impedance at multiple points in the stimulation cycle to control the pulse generator to maintain the REB. The controller, recognized as the registration and conversion means / computer or microcomputer, interfaces with the impedance measuring unit to control the pulse generator as to the number of pulses, the timing, frequency and voltage to provide the

desired treat effect/ create constant electrical fields, such capability of pulse control indicative of a controller with memory and processing capability (abstract; figs. 1, 3; col. @ 1-5; col. 4 @ 1-36; col. 5 @ 26-56; col. 7 @ 19-35; col. 9 @ 38 - col. 10 @ 23 and 36-48; col. 11 @ 6-38).

As to the impedance measurement measuring a change in capacitance to terminate the pulses when a desired treatment is obtained, Weaver et al. teach the impedance measurement is used to measure a change in capacitance and to terminate the pulses when a desired treatment is obtained (col. 10 @ 16-23; col. 13 @ 46 – col. 13 @ 14).

### *Objections*

4. The Examiner notes the following objections:

- on page 8, line 9 of the specification, a trademark, Teflon™, is used without indicating the trademark status, and
- In claim 71, final line, it appears “assement” should be --assessment--.

### *Statutory Basis*

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fran Oropeza whose telephone number is (571) 272-4953. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communication and for After Final communications.

Frances P. Oropeza  
Patent Examiner  
Art Unit 3766

110  
7/18/06

  
Robert E. Pezzuto  
Supervisory Patent Examiner  
Art Unit 3766